

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MILISA FOSTER GALYEON,

Plaintiff,

v.

STATE OF TEXAS, et al.,

Defendants.

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Case No. 6:21-cv-410-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court are motions to dismiss filed by each defendant: Judge Robert Wilson's Motion to Dismiss (Docket No. 5); Defendant Assistant District Attorney Jessica Wortham's Motion to Dismiss Pursuant to Rule 12(b)(6) (Docket No. 20); and Defendants the State of Texas, Texas Department of Family & Protective Services, Andrew Chestnut, Teresa Cushman, and Kathrine Deshotel's Motion to Dismiss Plaintiff's Original Complaint (Docket No. 21). This case is referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

On December 6, 2021, Judge Mitchell issued a Report and Recommendation recommending that the Court grant all three motions, dismissing the claims against the individual defendants in their individual capacities with prejudice for failure to state a claim and dismissing the claims against the State of Texas, Texas Department of Family & Protective Services, and the individual defendants in their official capacities without prejudice for lack of subject matter jurisdiction. Docket No. 32.

Plaintiff moved for reconsideration, which the Court construes as written objections to the Report. Docket No. 35. Plaintiff also moved for leave to amend the complaint. Docket No. 36. Each defendant responded to the objections and motion for leave to amend. Docket Nos. 39, 40, 41 and 42.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).


In the objections, Plaintiff asserts that the Court has subject matter jurisdiction to consider her claims for constitutional and statutory violations. She also submits that her allegations are not “flimsy” or “empty.” Docket No. 35 at 3. However, Plaintiff’s objections do not address the Report’s findings concerning Eleventh Amendment immunity, judicial immunity, prosecutorial immunity, or qualified immunity. Plaintiff’s pleadings do not allege facts that would overcome immunity, and her objections do not show error in the Report’s analysis.

In addition to filing written objections, Plaintiff moved for leave to amend the complaint and filed a proposed amended complaint. Docket Nos. 36 and 37. The amended complaint reasserts the same allegations previously submitted and does not put forth any factual allegations that would not be subject to the same immunity

challenges. Additionally, the proposed amendment would be futile, and the amended complaint would still fail to survive motions to dismiss by the defendants on the same grounds previously asserted.

Having conducted a de novo review of the record in this case and the Magistrate Judge's Report, the Court has determined that the Report of the Magistrate Judge is correct, and Plaintiff's objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 32) as the opinion of the District Court. Plaintiff's motion for leave to amend (Docket No. 36) is **DENIED**. Judge Robert Wilson's Motion to Dismiss (Docket No. 5); Defendant Assistant District Attorney Jessica Wortham's Motion to Dismiss Pursuant to Rule 12(b)(6) (Docket No. 20); and Defendants the State of Texas, Texas Department of Family & Protective Services, Andrew Chestnut, Teresa Cushman, and Kathrine Deshotel's Motion to Dismiss Plaintiff's Original Complaint (Docket No. 21) are **GRANTED**. Plaintiff's claims against the individual defendants in their individual capacities are **DISMISSED WITH PREJUDICE** for failure to state a claim. Plaintiff's claims against the State of Texas, Texas Department of Family & Protective Services, and the individual defendants in their official capacities are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

So **ORDERED** and **SIGNED** this 11th day of **January, 2022**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE